APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,538	02/20/2004	Stephen Cutler	CUTSP0104US	7446

23908   7590   10/05/2009
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EXAMINER
HAMILTON, LALITA M

ART UNIT	PAPER NUMBER
3691	

MAIL DATE	DELIVERY MODE
10/05/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 March 2009*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-14,45-84,93-106 and 137-176* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-14,45-84,93-106 and 137-176* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

    1.☐ Certified copies of the priority documents have been received.

    2.☐ Certified copies of the priority documents have been received in Application No. _____.

    3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This action is in response to the amendment filed on March 16, 2009.

Election/Restrictions

The restriction set forth in the previous Office Action is final. Claims 1-14, 45-84,

93-106, and 137-176 have already been examined.

Claim Rejections - 35 USC § 101

The rejection has been withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-14, 45-84, 93-106, and 135-176 are rejected under 35 U.S.C. 102(e) as

being anticipated by Borzenko (6,963,855), as set forth in the previous Office Action.

With regard to claims 100-106, the program claims correspond to method claims

1-7 examined in the previous Office Action. The claims were rejected as follows:

Borzenko discloses a method and corresponding program for displaying market

activity comprising tracking activity of a plurality of market makers relating to securities

traded on at least one common exchange where the market makers place bids and

asks, receiving a dynamically updated data stream containing level 1 and level 2 data

relating to a plurality of securities traded over the at least one exchange, the level 1 data

including at least the last trade price, inside bid and inside ask of each security and the

level 2 data containing a bid price, a bid time, a bid volume, a security identifier, and a

market maker identifier for each bid, and an ask price, an ask volume, an ask time, a

security identifier and a market maker identifier for each ask, and analyzing the data

stream for a set of symbols to derive a statistic indicative of activity of an inside market

for each of the symbols, the statistic updated to correspond to content of the updated

data stream and the statistic selected from at least one of a total number of market

makers at the inside market, and a difference between a number of market makers at

an inside bid price and a number of market makers at an inside ask price (co1.2, line 25

to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-

45); displaying at least one of the statistics indicative of activity of the inside market in at

least one of a table or a chart for each corresponding symbol (co1.2, line 25 to co1.4,

line 18; co1.6, lines 6-35; col.7, line 35 to co1.8, line 55; and col.11, lines 30-45);

dynamically sorting the at least one of the table or the chart based on a parameter

selected by the user to reflect current market activity (co1.2, line 25 to co1.4, line 18;

co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the

data stream, the filtering including discarding bids having a price lower than the last

trade value minus one of a selected threshold percentage of the last trade value or a

fixed price away, and discarding asks having a price higher than the last trade value

plus one of a selected threshold percentage of the last trade value or a fixed price away

(col.2, line 25 to co1.4, line 18; co1.6, lines 6-35; co1.7, line 35 to co1.8, line 55; and

co1.11, lines 30-45); filtering is conducted for a plurality of selected threshold

percentages or fixed prices away, and for each selected threshold percentage or fixed

price away a corresponding data set is derived, the statistic being calculated and

updated for each symbol for each data set (co1.2, line 25 to co1.4, line 18; co1.6, lines

6-35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the data stream

for each symbol based on traded volume (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-

35; co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45); filtering the data stream for

each symbol based on traded price (co1.2, line 25 to co1.4, line 18; co1.6, lines 6-35;

co1.7, line 35 to co1.8, line 55; and co1.11, lines 30-45).

Response to Arguments

Applicant's arguments filed March 16, 2009 have been fully considered but they

are not persuasive.

The Applicant argues that the Examiner did not examine claims 100-106. In

response, the Examiner erroneously omitted the claim numbers on the Office Action

summary and in the rejection; however, the claims were examined. The index of claims

clearly states that claims 100-106 were rejected. Claims 100-106 were given a rejection

under 35 U.S.C. on p.3 of the previous Office Action. Further, claims 100-106

correspond to method claims 1-7. The rejection stated that "Borzenko discloses a

method and corresponding program." Therefore, this action cannot be made non-final.

The Applicant argues that Borzenko does not disclose deriving a statistic

comprising a total number of market makers at the inside market, and a difference

between a number of market makers at an inside bid price and a number of market

makers at an inside ask price; deriving a statistic comprising a total volume of shares at

the inside market, and at least one of a difference between a number of shares at an

inside bid price and a number of shares at an inside ask price, or a percent of inside

market shares at the inside bid price as compared to a percent of inside market shares

at the inside ask price; deriving a statistic that compares an aspect of market maker

inside market activity at a first time period versus a second time period; for a selected

market maker and on a symbol by symbol basis, deriving a statistic that compares an

aspect of market maker inside market activity at a first time period versus a second time

period; for each symbol and market maker pair from a set of symbols and a set of

market makers, deriving a statistic comprising counting at least one of a number of

times that a bid having an inside bid price is placed, or a number of times that an ask

having an inside ask price is placed; or for each symbol and market maker pair from a

set of symbols and a set of market makers, deriving a statistic comprising counting at

least one of: a number of times the market maker is a first market maker to post an

inside bid that is higher than an immediately preceding inside bid for the symbol, or a

number of times the market maker is a first market maker to post an inside ask that is

lower than an immediately preceding inside ask for the symbol.

In response, Borzenko discloses deriving a statistic comprising a total number of

market makers at the inside market, and a difference between a number of market

makers at an inside bid price and a number of market makers at an inside ask price

(The data representing the ticks comprise a security symbol, tick direction, and a side.

Based on the movement of the tick and information generated from the market maker

activity, a list is generated indicating the difference in the movements of the security or

securities--col.2, lines 35-60 and col.12, lines 35-50); deriving a statistic comprising a

total volume of shares at the inside market, and at least one of a difference between a

number of shares at an inside bid price and a number of shares at an inside ask price,

or a percent of inside market shares at the inside bid price as compared to a percent of

inside market shares at the inside ask price (The price of the stock will move in relation

to the volume of the shares of the stock trading. The data representing the tick is

received and a list is generated comprising calculating from the stored tick times a

security momentum for the security identified by the symbol representing the tick, said

security momentum being a numeric indication of relative security price motion--col.3,

lines 25-41); deriving a statistic that compares an aspect of market maker inside market

activity at a first time period versus a second time period (The security momentum

includes calculating time differences between current time and stored tick times and

summing the calculated differences--col.3, lines 35-40); for a selected market maker

and on a symbol by symbol basis, deriving a statistic that compares an aspect of market

maker inside market activity at a first time period versus a second time period (The

security momentum includes calculating time differences between current time and

stored tick times and summing the calculated differences--col.3, lines 35-40); for each

symbol and market maker pair from a set of symbols and a set of market makers,

deriving a statistic comprising counting at least one of a number of times that a bid

having an inside bid price is placed, or a number of times that an ask having an inside

ask price is placed (The price of the stock will move in relation to the volume of the

shares of the stock trading. The data representing the tick is received and a list is

generated comprising calculating from the stored tick times a security momentum for

the security identified by the symbol representing the tick, said security momentum

being a numeric indication of relative security price motion--col.3, lines 25-41); and for

each symbol and market maker pair from a set of symbols and a set of market makers,

deriving a statistic comprising counting at least one of: a number of times the market

maker is a first market maker to post an inside bid that is higher than an immediately

preceding inside bid for the symbol, or a number of times the market maker is a first

market maker to post an inside ask that is lower than an immediately preceding inside

ask for the symbol (The price of the stock will move in relation to the volume of the

shares of the stock trading. The data representing the tick is received and a list is

generated comprising calculating from the stored tick times a security momentum for

the security identified by the symbol representing the tick, said security momentum

being a numeric indication of relative security price motion--col.3, lines 25-41).

Therefore, the Examiner is interpreting Borzenko as reading onto the invention as

claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in

this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Lalita M. Hamilton whose telephone number is (571)

272-6743. The examiner can normally be reached on Tuesday-Thursday (6:30-2:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Kalinowski Alexander can be reached on (571) 272-6771. The fax phone

number for the organization where this application or proceeding is assigned is 571-

273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

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For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lalita M Hamilton/
Primary Examiner, Art Unit 3691